

Hammurabi and Moses: Law as a Mirror of Civilization

What do the laws of a society tell us about the lives and beliefs of the people who write, enforce, and obey those laws? What was the chief difference between the law codes of these two leaders?

Early civilizations were both fragile and gradual. We often make lists of their qualities as if they were chemical compounds or recipes: take several Neolithic farming villages and a river valley; add a group of nomadic herdsman; stir briskly with bronze weapons. Blend in language, cities, writing, a system of class differentiation with warriors and priests at the head of the list, and simmer until a civilization emerges. Garnish with trade and conquest before serving.

Of course, it did not happen that way. The ideas, customs, and material things which constituted early civilizations came together slowly over centuries. Only after the fact, when the cities or settlements with their kings, priests, beliefs, shops, and soldiers were all in place, do we speak of a particular civilization. And this complex social, political, and economic creation was both strong and weak, strong enough to engage in wars of conquest, weak enough to be destroyed by the death of a powerful leader, or by a famine caused by a drop of two degrees in the average annual mean temperature.

While it lasted, each great early civilization was held together by power and traditions: the power of political and social elites and the traditions which are embodied in the great religious and philosophical value systems that mark all major civilizations.

These traditions give meaning to political and social institutions—to family life, education, government, and the marketplace. Though it is not always mentioned (because it is taken for granted),

the power and traditions of any society or civilization are reflected in its laws.

We see such reflections in two early, but very different, civilizations in the ancient near east: the Babylonian and the Hebrew. The first developed in the early part of the second millennium B.C.E. in the Tigris and Euphrates valley, while the second came together in the thirteenth century B.C.E. when Moses led the Hebrew people out of Egypt east into the Sinai Desert. The most famous ruler of the Babylonians was Hammurabi, who ruled from 1792–1750 B.C.E. After long wars in which he conquered the older Sumerian cities such as Larsa, Erech, and Ur in the southern part of Mesopotamia, Hammurabi published a list of 300 laws by carving them into a black basalt pillar seven feet high and two feet in diameter, which he erected near the site of the modern city of Baghdad in Iraq. Moses claimed to have received at least some of his laws directly from God while the Hebrews wandered through the Sinai desert after leaving Egypt. Nearly all the Hebrew laws are recorded in their holy book, the Torah (the Law), which makes up the first five books of the Hebrew Bible, or Old Testament.

Although both Hammurabi and Moses are famous as law-givers, scholars are quick to point out that Hammurabi's famous "Code" was not really a modern collection of laws, nor were the laws in it particularly new. The same is true of the "laws of Moses" found in the Torah. In both cases, the laws and traditions ascribed to these men were derived in part from earlier traditions. Hammurabi's Code is a collection of time-honored Mesopotamian legal principles developed earlier in the Sumerian cities. Many of the laws in the Mosaic, or Covenant Code of the Hebrews found in Exodus borrow heavily from Hammurabi's code; others, especially those in Deuteronomy, were developed in the late seventh century B.C.E., long after the Hebrews had left the desert and established themselves in Palestine. Although Hammurabi and Moses were real people, their names became symbols of the traditions and values of their respective civilizations; Moses, in particular, became a nucleus around which legends formed.

It was easy for legends to form because so little was known about the lives of Hammurabi and Moses. Hammurabi was an active ruler who spent the last fourteen years of his reign in continuous warfare, attempting to control the people along the Euphrates

River. He wanted “to make justice appear in the land, to destroy the evil and the wicked [so] that the strong might not oppress the weak.”¹ We know the familiar story of Moses told in Exodus: how the infant was found by the Pharaoh’s daughter in a basket made of bulrushes (the same story is told of an early Sumerian king); how the adult Moses killed an Egyptian, then fled to Midian, where he became a shepherd and the son-in-law of a Midian priest; how God called him from a burning bush to lead his people out of Egypt; and how he did this, probably during the reign of Pharaoh Rameses II (1304–1237 B.C.E.).

It is interesting that Moses is presented throughout this book as a fully human person on whom God “imposes” his will. This reflects the unique relationship between God and humankind in the Hebrew tradition. The Hebrew God was so different from humans that his image could not be drawn nor his name spoken or written in full except on special occasions, yet he made agreements with a weak and fallible people. Other ancient peoples, unlike the Hebrews, often depicted their gods in human or animal form rather than seeing humans as made in the image of God. The book of Exodus also shows Moses to be a man passionately concerned with social justice and what we call today “national liberation.” No non-scriptural source of that time speaks of him, and so our knowledge of Moses is limited by what scriptures tell us about Moses as the leader, prophet, and liberator of his people.²

The actual lives of these men are less important than what the laws ascribed to them tell about the lifestyle of their peoples. The laws of Hammurabi as well as those in the Old Testament tell us much about what the Babylonians and Hebrews considered important; reading them allows us to look into their law courts, temples, businesses, homes, and even their hearts and minds. We can see how their values differed from ours, as well as how they were similar. In the final analysis, the laws of the Babylonians, a commercial, city-oriented people who worshipped many gods, differed significantly from those of the Hebrews, a pastoral people who worshipped a single deity called Yahweh.

Initially, however, the similarities between the laws of these two peoples are more striking than the differences. The most famous feature of Hammurabi’s Code is its emphasis on the law of retaliation (*lex talionis*). This demands, in the words of laws 196 and

200, that "if a man has put out the eye of a free man, they shall put out his eye. . . . If a man knocks out the tooth of a free man equal in rank to himself, they shall knock out his tooth." Law 209 states "If a man strikes the daughter of a free man and causes her to lose the fruit of her womb, he shall pay 10 shekels of silver." In the oldest Hebrew laws, those of the Covenant Code found in Exodus, we read: "When men strive together, and hurt a woman with child, so that there is a miscarriage . . . the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judge determines. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, burn for burn, wound for wound, stripe for stripe."³ In this case, the Hebrew laws seem to be a clear summary and paraphrase of the earlier Babylonian statutes.

Hebrew and Mesopotamian laws dealing with lying are also similar, the law in Hammurabi's code reading crisply: "If a man has come forward in a case to bear witness to a felony and then has not proved the statement he has made, if that case is a capital one, that man shall be put to death." In Deuteronomy 19:16-19, someone who wished to accuse another of wrongdoing has to "appear before the Lord," that is, the priests and judges, who "shall inquire diligently, and if the witness . . . has accused his brother falsely, then you shall do to him as he had meant to do to his brother. . . ." Two verses later, we find the *lex talionis* repeated again: "Your eye shall not pity; it shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot." Hammurabi's laws and those of Moses dealing with people being placed in slavery as payment for debts are also similar, although the Hebrews required such people to serve six years in order to earn their freedom, while the Babylonians specified three. It was interesting that in both cases a man could place his wife or child in temporary servitude in payment for his debt.⁴

Rules dealing with marriage are also similar in the laws of Hammurabi and those of Moses. In both societies, controlling sexual relations was very important. This is understandable if we realize that here, as in most early societies, marriage was, first and foremost, a legal contract aimed at the production of children and the safeguarding of property rights for both parties. A Babylonian woman brought to her marriage a dowry, which was designed to protect her and her children from arbitrary action by her husband more than it was intended to enrich him. This is clear from several divorce laws

which state that, in case of divorce, sanctioned if the woman were barren, the husband "shall give her money to the value of her bridal gift and shall make good to her the dowry which she brought from her father's house." Hebrew divorce law was less protective of the wife. A man could divorce his wife if he had "found some indecency in her"; he had only to "write her a bill of divorce and put it in her hand and send her out of his house."⁵ In both societies, a barren woman could avoid divorce by allowing her husband to have children by a "slave-girl." This practice, followed by the Hebrew patriarch, Abraham, and described in the book of Genesis, shows the importance of child-bearing. Laws allowing children by slave women also indicate how Hammurabi used earlier Sumerian traditions, since Abraham came from this area south of Babylonia and lived several centuries before Hammurabi. The importance of properly caring for children in Hammurabi's society is clear in several laws which gave a woman the right to live with another man ("enter another man's house") if her husband had left her for an extended period of time without adequate support. The husband, who might have been a prisoner of war or on a business trip that took longer than planned, did have the right to reclaim his family when he returned. However, if the woman had been amply provided for and still entered another man's house, the judge was required to "convict that woman and cast her into the water."⁶

This last provision raises the question of sexual fidelity in marriage, a problem as old as humankind and one that people in traditional societies had to deal with because important questions of inheritance were at stake. Both societies were generally harsh in punishing infidelity. "If a woman has procured the death of her husband on account of another man, they shall impale that woman," reads law 153 in Hammurabi's code. "If a man is found lying with the wife of another man, both of them shall die," according to Deuteronomy 22:22. As we might expect, each society condemned not only adultery but also homosexuality, violating "betrothed virgins," and incest. In Hammurabi's code, a man was banished for having carnal relations with his daughter and could be "cast into the water" for "lying in the bosom" of his son's fiancée. A son and his mother were burned for sleeping together after the father/husband's death. Hebrew law included long lists of persons whose "nakedness" was not to be "uncovered." The list included all members of the immediate family, as well as aunts,

uncles, sisters-in-law, half-brothers and -sisters, grandchildren, and, finally, for good measure, "any beast."⁷

This prohibition against bestiality highlights a difference between Hebrew and Babylonian marriage laws. Unlike the subjects of Hammurabi, the people of Moses were concerned with more than just keeping lines of inheritance clear. In both Leviticus and Deuteronomy, there is a concern with morality and holiness, as well as with property rights. Many of the statements in Deuteronomy end with the words "so you shall purge the evil from Israel." Violations of these laws are called "defilements" in Leviticus and are considered abominable because they affect the community spiritually as well as socially; Yahweh would look unfavorably upon the Hebrew community if such individual defilements were allowed to exist unpunished.

Differences between the laws of Hammurabi and those of Moses become clearer as we look at statutes relating to agriculture. Babylonian lands were honeycombed with irrigation canals and dikes, whose upkeep was crucial to the welfare of the entire Mesopotamian area. Therefore, it is not surprising to read that, if a farmer were lax in maintaining the irrigation canals on his land, thus allowing water to break through a dike and flood a neighbor's field, he would have to replace the lost crop. If he could not afford to do this, "he and his goods" would be sold to pay the debts to his neighbor. Hammurabi's code also assumed that most land was rented out and provided very specific protections for the landlord if the rented land was not properly cultivated. Hebrew society in Palestine, by contrast, was largely pastoral with few large cities. Most land was owned by individuals and not rented out, and the people, in general, were poorer. The law of Moses, therefore, says little about landlord-tenant relationships but much about the responsibility of farmers toward the poor. Land was to lie fallow every seven years so that the poor could gather the residue from such fields, orchards, or vineyards. The Hebrews were also told not to clear their fields or vineyards entirely, but to leave a strip around the edge "for the poor and for the sojourner."⁸ No such humanitarian injunctions are found in Hammurabi's code, indicating not only that Babylonian society was more centralized, urban, wealthy, and highly structured, but also that the Hebrews consciously tried to temper justice with mercy. Hammurabi's code also naturally reflects the complex, differentiated social structure of the densely

populated Mesopotamian region. Slaves are one of three groups of people mentioned in the code. There were two other major classes—*awilum*, or free men, and *muskenum*, or those dependent upon another. Men in the last group were sometimes called “villeins” or “subjects.” They were similar to modern sharecroppers or tenant farmers. They were clearly submissive to others, either to their upper-class landlord or to the king—since much of the land was owned directly by the government. The eyes and teeth of villeins were not worth as much as those of free men. Law 201, for example, specified that one who knocked out the tooth of a villein pay one-third maneh of silver; law 198 required that the broken bone or the eye of a villein be paid for with one maneh of silver.⁹ While this was a considerable sum (slightly over a pound of silver), it was better than losing an eye.

Justice, therefore, had a clear relationship to class standing in Hammurabi’s kingdom. Class differences even affected the cost of medical services. Surgery cost a free man ten shekels (2–3 ounces of silver), a villein five, and a slave only two—if the patient lived. If the patient was a free man and died during surgery, the surgeon could lose his hand; if the victim of poor surgery was a free man and died during surgery, the surgeon could lose his hand; if the victim of poor surgery was only a slave, the surgeon had only to replace the man with another.¹⁰ These penalties, class bias aside, were deliberate attempts to encourage efficiency. And, in a society where a single broken dike, bad harvest, or unprotected city wall could mean disaster, harsh measures taken to ensure efficiency were understandable.

These penalties for inefficiency were severe in this society, where the government’s attempts to control daily life rivaled that of modern authoritarian states. Consider the ale-wife who would be put to death under law 109 if she failed to turn in felons who frequented her ale-house, or the builder (law 229) who knew he would be executed if a house he built fell down, killing the householder. Efficiency was important to the shipbuilder, who was forced by law to guarantee his work.¹¹

The Hebrew Torah, on the other hand, has no such rules, since the semi-nomadic pastoral nomads of Palestine did not have commercial house builders, or a maritime industry. Hammurabi had inscribed dozens of laws on his pillar which have no parallels in the laws of Moses: sixteen laws defining the duties of soldiers, constables,

and tax collectors; eleven dealing with physicians; twelve regulating the activity of merchants (including wine sellers); six each concerning the obligations of house builders and boatmen; one dealing with the collision of ships; and over a dozen regulating wages and prices.¹²

These last—those regulating wages and prices—are detailed and famous. Wages for tailors, carpenters, potters, jewelers, blacksmiths, leather-workers, and brick-layers were all fixed by law. Modern economists frown on wage and price fixing, claiming that it stifles private initiative, encourages black market activity, or, at best, causes shortages of goods and services. While we do not know how strictly the wage and price laws in Hammurabi's code were followed, we do know that the Babylonian economy had a large amount of state control but also a strong "private sector." Since much land was owned directly by the king, many of the villeins or tenant farmers were, in effect, government employees. Yet the Babylonians developed a form of capitalism "by providing interest as an incentive for investing capital." One section of the code limits the interest rate to 20 percent on loans of grain or silver.¹³ Hammurabi even wrote measures regulating conduct among business partners, merchants, and their salespeople, and grain bin owners and their customers.

We might naturally ask how such elaborate laws were enforced. Soldiers and police can try to enforce laws, whether they are fair or not, but for laws to last as long as these it is necessary for decisions of judges to be backed by some moral authority which both parties in court can respect. No pre-modern legal system works without religious sanction, and when we look at the authority behind the laws in the Babylonian and Hebrew civilizations we can better understand why the Old Testament laws had a more profound moral effect on human history than those devised by the Mesopotamians and codified by Hammurabi.

Earlier we noticed that the Hebrew laws concerning agriculture were marked by a humanitarian emphasis not found in their Babylonian counterparts. This concern for the less fortunate is clear throughout the Torah. In the earlier laws found in Exodus, the followers of Moses were told twice: "You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt." One of these passages continues: "You shall not afflict any widow or orphan. If you do afflict them, and they cry out to me, I will surely hear their cry; and my wrath will burn, and I will kill you with the

sword, and your wives shall become widows and your children fatherless." Later, in Leviticus, the Hebrews are warned not to oppress their neighbors, including the deaf and the blind, and to "not be partial to the poor or defer to the great." In Deuteronomy 10:17–19, the sanction for all of these warnings becomes clear:

For the Lord your God is God of gods and Lord of lords, the great, the mighty, and the terrible God, who is not partial and takes no bribes. He executes justice for the fatherless and the widow, and loves the sojourner, giving him food and clothing. Love the sojourner therefore; for you were sojourners in the land of Egypt.¹⁴

From at least the time of Moses, the Hebrews believed in a single, all-powerful God, Yahweh, the "God of gods and Lord of lords." In their early history, the Hebrews accepted the fact that other people worshipped other gods; they simply believed that their god, Yahweh, was more powerful. This belief, sometimes called henotheism, evolved into full-scale monotheism, the belief that there exists only one god for everyone. But, even before Moses, the Hebrews believed that their laws, starting with the Ten Commandments and ending with a host of regulations governing the details of everyday behavior, were given to them directly by Yahweh. And, as these passages from the Torah indicate, Yahweh not only sought justice for his people; he loved them as well.

Nowhere in Hammurabi's code, for example, do we find a law telling a businessman not to charge interest when he loans money to the poor and adding: "if you take your neighbor's garment in pledge, you shall restore it to him before the sun goes down; for that is his only covering, it is his mantle . . . in what else shall he sleep?" And, as usual in the Torah, this injunction is followed by the enforcing statement: "And if he cries to me, I will hear, for I am compassionate."¹⁵ In other places the word *compassionate* is replaced with such words as *faithful*, *just*, and *holy*.

Of course, Hammurabi's code, despite the modern sound of many of its provisions, was not a "secular" document. Hammurabi himself clearly believed in the existence of the gods and in a moral universe which their actions sustained—with his help. He ended his code by asking the gods to curse anyone who would change his work. He asked Ninlil, "the great mother," to destroy the land, ruin the people, and "pour out the life-blood" of any future ruler who would change the Code. Shamash, "the great judge of heaven and

earth," was called upon not only to kill such a man but "to make his ghost thirst for water in the world below." Ishtar, "the lady of battle and conflict," was asked to leave the armies of anyone bold enough to change the laws "a heap of corpses on the plain."¹⁶

Although Hammurabi ended by calling upon the gods, his code is remembered not as a great moral document but, rather, as one of the first great legal statements of the notion that the injured should receive compensation, and harsh punishments should be used as a deterrent to crime. These Babylonian principles found their way into Hebrew law and later into other legal systems; they are found in the laws of many modern nations.

Though they did borrow heavily from the Mesopotamians, the Hebrews passed on a different legacy. While the Mosaic code is followed in detail today by only a small number of Orthodox Jews, the general moral principles of the Torah, especially the Ten Commandments and the concern for the poor and oppressed, have become an integral part of the laws and political practices of many modern nations. Just as some of our modern civil laws giving people the right to sue for personal injuries might be said to have descended from Babylonian laws, so, too, do many of our laws protecting the poor remind us of the principles of the Old Testament.

Perhaps this is why, even today, when we hear the phrase "an eye for an eye and a tooth for a tooth," we "know" it came from "the Bible." Given all the borrowing he did in putting together his code, Hammurabi would probably understand—and let us escape with only a small curse for misunderstanding the origin of the *lex talionis*.

Notes

1. G. R. Driver and John C. Miles, eds., *The Babylonian Laws*, vol. II (Oxford: Clarendon Press, 1952), 7; this complete annotated translation of Hammurabi's laws is hereafter referred to as *Laws*.
2. In addition to the many encyclopedia articles on Moses, see Andre Neher, *Men of Wisdom: Moses and the Vocation of the Jewish People*, trans. by Irene Marinoff (New York: Harper and Row, 1959); Martin Noth, *A History of Pentateuchal Traditions*, trans. and introduced by Bernhard W. Anderson (Englewood Cliffs, NJ: Prentice-Hall, 1972), 156–174; Elie Wiesel, "Moses: Portrait of a Leader," in *Messengers of God: Biblical Portraits and Legends* (New York: Random House, 1976), 174–205.

AP World History

Reading: Hammurabi and Moses

Name _____

Period _____

Hammurabi and Moses: Law as a Mirror of Civilization

Reading Questions:

- 1) How did ancient law codes, such as Hammurabi's, come into existence? What was the role of a system of writing in this development?
- 2) How were the lifestyles and religious beliefs of Hebrews different from the Mesopotamians?
- 3) How were concepts such as retaliation and perjury similar in the two law codes?
- 4) Explain how marriage was different for Hebrews and Mesopotamians than it is today? What was its primary purpose?
- 5) How did the different environmental settings of the Hebrews and Mesopotamians affect their laws regarding agriculture?
- 6) How are the laws of Moses and Hammurabi different regarding the poor?
- 7) In what way did religious belief reinforce both the laws of Hammurabi and Moses? Give specific examples from the reading.

Law Codes of Hammurabi and Moses: Comparisons and Causation

Similarities in the two law codes:

Reasons for the similarities:

Differences between the two law codes:

Reasons for the difference: